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9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 LEPRINO FOODS COMPANY;
12 LEPRINO FOODS HEALTH &
WELFARE PLAN,

13 Plaintiffs,

14 v.

15 AVANI OUTPATIENT SURGICAL
CENTER, INC., a California
16 Corporation; MOUNTAIN VIEW
SURGICAL CENTER, INC., a
17 California Corporation; THE
CENTER FOR SURGERY AT
18 BEDFORD, LLC, a California limited
liability company; AMY ZARAGOZA,
19 an individual; BABAK
MOEINOLMOLKI, an individual;
20 BEHNAM KASHANCHI, an
individual; SAMUEL KASHANI, an
21 individual; SHERVIN AMINPOUR,
an individual; RALPH MAYER, an
22 individual; MICHAEL YADEGARI, an
individual; KARAPET
23 DERMENDJIAN, an individual;
24 SEPEHR LALEZARI, an individual;
MARIO ROSENBERG, an individual;
25 PEYMAN SOLIEMANZADEH, an
individual; and DOES 1-30,

26
27 Defendants.

28 AND RELATED COUNTERCLAIMS.

Case No. 2:22-cv-07434 DSF (JC)

**LEPRINO'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF APPLICATION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANT CRISTINA "LUZ"
PERRYMAN**

Judge: Hon. Dale S. Fischer Date:
March March 25, 2024
Time: 1:30 PM
Crtrm.: 7D

**NOTICE OF APPLICATION AND
DECLARATION OF KATHERINE
A. BOWLES FILED HERewith;
[PROPOSED] ORDER LODGED
HERewith**

Action Filed: October 12, 2022
Trial Date: August 13, 2024

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Leprino Foods Company and Leprino Foods Health & Welfare Plan (the “Plan,” and collectively, “Leprino”) apply to the Court for entry of a default judgment against Defendant Cristina “Luz” Perryman (“Ms. Perryman”). Leprino added Ms. Perryman as a defendant after discovering that she engaged in the conspiracy to profit from Leprino’s Plan together with fellow employee Defendant Amy Zaragoza, the three Surgery Center Defendants, various Surgeon Defendants, and anesthesia provider Charles K. Neal. Ms. Perryman has defaulted on her obligations to answer or otherwise respond to the Third Amended Complaint (“TAC”).

In considering a default judgment, the Court looks to the operative pleadings to determine the liability for Ms. Perryman’s alleged harms. At present, the TAC is the operative complaint and alleges that Ms. Perryman conspired with fellow Leprino employee Amy Zaragoza to recruit other Leprino employees and their beneficiaries by soliciting them from the Leprino Plant located in Lemoore, California. (TAC ¶¶ 26, 52, 53, 58.) Ms. Perryman and Ms. Zaragoza then connected the recruited Leprino employees with the Surgery Center Defendants and Surgeon Defendants to receive uncovered procedures, plastic surgery procedures, injections, and paid leaves of absence (“LOA”) from work. (TAC ¶¶ 58, 74, 81, 97, 98.) In exchange, Ms. Perryman received unlawful kickbacks in the form of monetary and non-monetary remuneration and bribes for herself and her beneficiaries. (TAC ¶¶ 26, 42, 130.) Significant examples are provided throughout the TAC of the recruited employees and beneficiaries, their uncovered procedures and paid LOAs, and of the resulting harm to Leprino. (See, e.g., TAC ¶¶ 46-117.) The scheme caused more than \$2.2 million in harm. (TAC ¶ 116.)

1 Pursuant to Federal Rule of Civil Procedure (“Rule”) 55(b), Leprino
2 sought and the Court entered a notice of default against Ms. Perryman. Ms.
3 Perryman’s failure to respond or remedy the notice of default authorizes
4 Leprino to apply for and obtain default judgment establishing liability and the
5 amount of harm. By way of this Application for Entry of Default Judgment
6 (the “Application”), Leprino provides legal and evidentiary support for a
7 default judgment and respectfully requests that the Court enter the relief
8 sought.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 Leprino brings this action as a party and a Plan fiduciary to recover
11 damages and attorneys’ fees and costs and to seek restitution of ill-gotten
12 gains, including equitable restitution. (TAC ¶ 1.) Leprino pursues Ms.
13 Perryman as a Defendant to claims for (1) Fraud; (2) Equitable Remedies
14 under ERISA; (3) Violations of California’s Unfair Competition Law (“UCL”);
15 and (4) Intentional Interference with Contractual Relations. The claims are
16 based on Ms. Perryman’s involvement in the conspiracy to recruit Leprino’s
17 employees and their beneficiaries for surgeries that were not covered by the
18 Plan. (TAC ¶ 26.) Ms. Perryman, along with the other named Defendants,
19 conspired to recruit Leprino employees and their beneficiaries for “mommy
20 makeovers,” cosmetic gastric weight loss surgeries, and related uncovered
21 and/or non-medically necessary procedures. (*Id.*)

22 Ms. Perryman resides in Hanford, California, and used to work at
23 Leprino’s nearby Plant in Lemoore, California. (Dkt. 251, TAC ¶¶ 9, 58, Dkt.
24 258.) After filing the complaint, Leprino discovered that Ms. Perryman had
25 worked with Ms. Zaragoza, another former Leprino employee, to recruit
26 Leprino employees and their beneficiaries to have procedures at Mountain
27 View, Avani, and Bedford surgery centers. (TAC ¶ 26; Dkts. 218-2, 218-8,
28 218-9, 218-10 (Decl. in support of Motion to Amend ¶¶ 3, 10-12, Exs. F-G).)

1 Leprino then filed a motion to add Ms. Perryman to the lawsuit, which
2 was granted on September 27, 2023. (Dkts. 218, 218-1, 239.) In the Motion
3 to Amend and Application to Seal, Leprino evidenced Ms. Perryman's
4 involvement with text messages produced by Defendant Mayer implicating a
5 "Cristina" who [REDACTED]
6 [REDACTED]. In addition, Leprino included a copy of
7 Ms. Zaragoza's response to Interrogatory No. 6 implicating, under oath, a
8 "Christine Parmen" as the person who referred Leprino employees to Ms.
9 Zaragoza to connect them with Defendant Mountain View Surgical Center.
10 Further, Leprino filed copies of communications from United Healthcare
11 Services, Inc. naming Cristina "Luz" Perryman as a person of interest in the
12 investigated scheme. (See, e.g., Dkts. 220-1(Decl. ¶¶ 10-12); 220-8(Ex. F);
13 220-9(Ex. G); 220-10(Ex. H) [redacted to comply with Court order Dkt. 228].)

14 On October 3, 2023, the Court issued a summons in Ms. Perryman's
15 name, and Leprino effectuated personal service on October 8, 2023. (Dkts.
16 258, 271.) Once Ms. Perryman's response deadline expired, Leprino sought
17 and the Clerk of Court entered a default against Ms. Perryman on November
18 13, 2023. (Dkts. 298, 304.)

19 **III. LEGAL STANDARD**

20 Rule 55(b) authorizes the Court to enter a default judgment after a
21 defendant fails to respond to the operative complaint and the Clerk of Court
22 enters default. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). After
23 the Clerk enters default, a defendant's liability is conclusively established,
24 and the well-pled factual allegations in the TAC are accepted as true.
25 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–19 (9th Cir. 1987)
26 (per curiam) (citing *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir.
27 1977)). "The general rule of law is that upon default the factual allegations of
28 the complaint, except those relating to the amount of damages, will be taken

1 as true.” See *Playboy Enterprises Intern., Inc.*, 314 F. Supp. 2d at 1039–40
2 (finding (quoting *Geddes*, 559 F.2d at 560).

3 Default Judgment may be entered either by the clerk or by the court.
4 (Rule 55(b).) However, default judgment may be entered by the clerk only if
5 plaintiff’s claim “is for a sum certain or a sum that can be made certain by
6 computation.” (*Id.*) In all other cases, default judgment must be entered by
7 the court. (*Id.*) Here, because Leprino’s prayer for relief includes reasonable
8 attorneys’ fees and costs, Leprino applies for default judgment entered by
9 the Court. *TCF Inventory Fin., Inc. v. Marker Oil Co., Inc.*, No. 2:17-CV-1768
10 JAM DB, 2018 WL 1634120, at *2 (E.D. Cal. Apr. 5, 2018)
11 (citing *GAG Enterprises, Inc. v. Rayford*, 312 F.R.D. 230, 234 (D.D.C. 2015)
12 (vacating the clerk’s entry of default judgment because the Clerk is not able
13 to enter default judgment for discretionary awards, including discretionary
14 attorneys’ fees.)

15 If default judgment is sought from the court, then the party must apply
16 and satisfy certain procedural obligations specific to: (1) whether the person
17 is a minor or unrepresented incompetent person; (2) whether the person has
18 appeared personally or through a representative; and (3) the court may
19 conduct a hearing or make referrals – preserving any federal statutory right
20 to jury trial – when it needs to: (A) conduct an accounting; (B) determine the
21 amount of damages; (C) establish the truth of any allegation by evidence; or
22 (D) investigate any other matter. (Rule 55(b)(2).)

23 A default judgment is appropriate and will not be disturbed if a
24 defendant has received notice of the filing of the action and has intentionally
25 failed to answer. See *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388,
26 1392 (9th Cir. 1988); *Playboy Enterprises Int’l, Inc. v. Muller*, 314 F. Supp.
27 2d 1037, 1039 (D. Nev. 2004) (holding “[i]n this case, Defendants’ failure to
28 respond to Playboy’s Complaint is grounds for this Court to enter a default

1 judgment”). The merits of the case need not be assessed when a defendant
2 “has received actual or constructive notice of the filing of the action and
3 failed to answer.” *Meadows v. Dominican Republic*, 817 F.2d 517, 522 (9th
4 Cir. 1987) (holding “[b]ecause appellants’ neglect was inexcusable, we need
5 not determine whether the record shows a meritorious defense or prejudice
6 to the appellees”).

7 **IV. ARGUMENT**

8 **A. Rule 55(b) Supports an Award of Default Judgment Against** 9 **Ms. Perryman**

10 Leprino is entitled to a default judgment holding Ms. Perryman liable
11 for the allegations in the TAC on the first four claims. As an initial matter,
12 Leprino seeks the entry by the Court on the basis that Leprino has met the
13 procedural requirements for entry of default judgment under Rule 55(b) and
14 Central District of California Local Rule (“L.R.”) 55-1. (See Declaration of
15 Katherine A. Bowles (“Bowles Decl.”), ¶¶ 3-5.)

16 Namely, on November 13, 2023, the Clerk entered default pursuant to
17 Rule 55(a) against Ms. Perryman following her failure to plead or otherwise
18 defend herself against the TAC. (Dkt. 304; Bowles Decl. ¶ 3.) Ms. Perryman
19 is not an infant or incompetent person, and there appears to be no basis for
20 application of the Service Members Civil Relief Act (50 U.S.C. App. § 521).
21 (*Id.* at ¶ 4.) Further, Leprino has served the Notice and Application for
22 Default Judgment on Ms. Perryman, even though it is not required by Rule
23 55(b)(2). (*Id.* at ¶ 5.) Therefore, the procedural prerequisites for entry of
24 default judgment have been met. (See, e.g., *PepsiCo, Inc. v. California*
25 *Security Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002) (finding that
26 plaintiffs met the procedural requirements where they addressed each
27 required factor in their application for default judgment).)

28 ///

1 **B. The *Eitel* Factors Support Granting Leprino's Application for**
2 **Default Judgment**

3 In determining whether to grant an application for default judgment, a
4 court considers several factors (the "*Eitel* factors"), which are: "(1) the
5 possibility of prejudice to plaintiff; (2) the merits of plaintiff's substantive
6 claim; (3) the sufficiency of the complaint; (4) the sum of money at stake; (5)
7 the possibility of a dispute concerning material facts; (6) whether the
8 defendant's default was due to excusable neglect; and (7) the strong policy
9 underlying the Federal Rules of Civil Procedure favoring decisions on the
10 merits." *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). In the
11 sections that follow, Leprino addresses the *Eitel* factors and establishes why
12 each one weighs in favor of default judgment.

13 **1. Leprino Will Suffer Undue Prejudice Absent Default**
14 **Judgment Against Perryman**

15 The first factor asks the Court to determine whether Leprino will suffer
16 undue prejudice absent default judgment. (*Id.*) This factor weighs in favor of
17 Leprino, because Ms. Perryman's absence from the process renders it
18 difficult to compel her involvement in discovery, deposition, and at trial,
19 which will prevent Leprino from seeking a judgment in the course of the
20 anticipated jury trial. *See Bank v. Karasevic*, No. 11CV00896J, 2015 WL
21 12977100, at *3 (N.D. Cal. Oct. 16, 2015) ("Courts have held that prejudice
22 exists where denying the requested default judgment would leave the
23 plaintiff without a proper remedy"); *Philip Morris USA, Inc. v. Castworld*
24 *Prod., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003) ("Plaintiff would suffer
25 prejudice if the default judgment is not entered because Plaintiff would be
26 without other recourse for recovery.").

27 Although there are multiple defendants who may be held jointly and
28 severally liable for the harm caused, undue prejudice remains present when
plaintiff's business has been greatly impacted by the absent defendant's

1 actions. See *Shanghai Automation Instrument Co. v. Kuei*, 194 F. Supp. 2d
2 995, 1005 (N.D. Cal. 2001) (holding that the plaintiff would be prejudiced if
3 default judgment was not entered against the defaulting defendant – despite
4 the involvement of multiple defendants – because the defaulting defendant
5 could not be located and plaintiff’s operations were disrupted by the injuries.)

6 Similarly, here, Leprino has been unduly prejudiced by the fact that its
7 Plan operations have been disrupted by the significantly increased expenses
8 resulting from the fraudulent billing to the Plan. (Bowles Decl. ¶ 10.) For
9 several months in 2021, the Plan expenses were increasing a couple
10 hundred percent each month and these expenses were not sustainable in
11 the long term. (*Id.*) It took additional time and expense to investigate and
12 bring Defendants’ misconduct to light, which necessitated the filing of this
13 action in order to cause a stop payment on the Defendants’ ongoing
14 submission of claims to United. (*Id.*) In fact, United continued paying
15 Defendants’ claims even after the Complaint was filed and finally ceased
16 making Leprino Plan payments in December 2022. (Dkt. 208 at p. 6 “United
17 processed the claims, from in or about March 2019 to December 2022.”)
18 Without this lawsuit, Leprino would have continued to incur harms and risked
19 financial instability. (*Id.*) Therefore, this first *Eitel* factor weighs in favor of
20 granting default judgment against Ms. Perryman.

21 **2. Perryman’s Role in the Scheme is Well-Pleaded and**
22 **Leprino Will Prevail on the Claims Against Her**

23 As the Court considers the second and third *Eitel* factors – including
24 whether Leprino “state[s] a claim upon which [it] may recover” and whether
25 Leprino will prevail upon those claims – the Court must presume it so long
26 as the operative complaint pleads each element of the claim against Ms.
27 Perryman. *Eitel*, 782 F.2d at 1471; *Philip Morris USA, Inc. v. Castworld*
28 *Prod., Inc.*, 219 F.R.D. 494, 499-500 (C.D. Cal. 2003) (holding that the

1 plaintiff stated a claim on which it may recover simply by holding that the
2 plaintiff's complaint properly alleged the necessary elements of the claims.);
3 *PepsiCo, Inc.*, 238 F. Supp. 2d at 1176 (holding that plaintiff proved the
4 elements of each claim for the purposes of default judgment by properly
5 alleging the elements of that claim.)

6 Leprino asserts claims against Ms. Perryman for: (1) Fraud; (2)
7 Equitable Remedies under ERISA; (3) Violations of UCL; and (4) Intentional
8 Interference with Contractual Relations. Here, the well-pled allegations (as
9 set forth in more detail in sections 2(a) – 2(d) below) were deemed true upon
10 the Clerk's entry of default. *TeleVideo Sys., Inc.*, 826 F.2d at 917–19;
11 *Geddes*, 559 F.2d at 560.

12 **a. Ms. Perryman's Conduct Amounts to Fraud**

13 The elements of fraud are: (1) misrepresentation; (2) knowledge of the
14 falsity, or scienter; (2) intent to defraud; (4) justifiable reliance; and (5)
15 resulting damages. *Lazar v. Superior Court*, 12 Cal.4th 631, 638 (1996).

16 In the TAC, Leprino sufficiently alleges Perryman's knowing and
17 intentional involvement in a scheme to defraud Leprino by recruiting its
18 employees and Plan beneficiaries for "mommy makeovers," cosmetic gastric
19 weight loss surgeries, and related uncovered and/or non-medically
20 necessary procedures by making misrepresentations that these surgeries
21 were "free or discounted plastic surgeries upon presenting 'full coverage
22 insurance (PPO).'" (TAC ¶¶ 26, 74.) Additionally, Ms. Perryman and Ms.
23 Zaragoza's recruitment scheme involved conspiring to provide false medical
24 documentation to qualify Leprino employees for paid LOAs. (TAC ¶¶ 56, 66.)

25 As stated in the TAC, Ms. Perryman conspired to and did recruit
26 patients for the scheme, all the while knowing that their claims would be
27 falsified and billed to Leprino and she knowingly participated in the scheme
28 herself. (TAC ¶¶ 52, 53; Dkt. 218-8 (Ex. F); Bowles Decl. ¶ 7, Ex. A.) In

1 addition, Ms. Perryman knew or should have known that she was required
2 to: (1) truthfully and accurately report the procedures received and claimed
3 to the Plan; (2) avoid obtaining personal payment and inducement for
4 procedures referred to the Surgery Center Defendants and Surgeon
5 Defendants and billed to the Plan; (3) refrain from recruiting patients to a
6 scheme in exchange for inducements and paid LOAs; and (4) refrain from
7 personally engaging in the scheme to benefit herself and her beneficiaries
8 covered by the Plan. (TAC, ¶¶ 115, 128.)

9 Ms. Perryman intentionally and knowingly violated the above by acting
10 as a recruiter in a scheme to submit intentionally misleading, fraudulent
11 and/or erroneous claims to the Plan, including for [REDACTED] procedures.
12 (TAC, ¶¶ 26, 120.) Leprino reasonably relied upon the truth of the stated bills
13 in making payments to the Defendants. (TAC, ¶¶ 115-16.) As a result,
14 Leprino sufficiently alleges its fraud claim against Ms. Perryman.

15 **b. Leprino's Equitable Remedies Under ERISA**

16 The elements of a claim for equitable remedies under ERISA are: (1) a
17 promise by the beneficiary to reimburse the fiduciary for recovery of benefits
18 paid under the plan; (2) the agreement specifically identifies a particular fund
19 from which the fiduciary will be reimbursed; and (3) the particular funds
20 identified are within the possession and control of the beneficiary. *Bilyeu v.*
21 *Morgan Stanley Long Term Disability Plan*, 683 F.3d 1083, 1093 (9th Cir.
22 2012) (citing *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356, 357, 126
23 S. Ct. 1869, 1869 (2006).). Leprino sufficiently alleged all three prongs of the
24 test set forth in *Bilyeu*, 683 F.3d at 1093-1094.

25 Leprino has standing under ERISA § 502(a)(3) to enforce the terms of
26 the Plan and pursue any overpayments that are made to patients or
27 providers on their behalf, including to Ms. Perryman. Ms. Perryman knew
28 that the Plan covered procedures that were properly authorized and covered

1 by the Plan and knew that her procedures were not covered by the Plan and
2 would result in an overpayment to herself and to Defendants (she is [REDACTED]
3 [REDACTED] in the TAC). Leprino alleges the amounts were paid to a particular fund
4 or funds that can be traced, and the entire sum returned. (TAC ¶¶ 122-126.)
5 As such, Leprino has pled all three elements of the claim.

6 **c. Ms. Perryman's Violations of the UCL**

7 California's UCL prohibits "any unlawful, unfair or fraudulent business
8 act or practice. . . ." Cal. Bus. & Prof. Code § 17200. "Because the statute is
9 written in the disjunctive, it is violated where a defendant's act or practice
10 violates any of the foregoing prongs." *Davis v. HSBC Bank Nevada, N.A.*,
11 691 F.3d 1152, 1168 (9th Cir.2012). Here, Leprino has sufficiently shown
12 that Ms. Perryman's actions recruiting Leprino employees and beneficiaries
13 to receive procedures are violations under the 'unfair,' 'unlawful,' and
14 'fraudulent' prongs. In exchange for recruiting and referring patients, Ms.
15 Perryman received unlawful kickbacks, in the form of monetary and non-
16 monetary remuneration and bribes. (TAC ¶¶ 26, 42, 111-117, 130.) Such
17 actions qualify as illegal actions and violations of the UCL. (See *Bay City v.*
18 *ILWU-PMA Welfare Plan Board of Trustees & ILWU-PMA Welfare Plan*,
19 2018 WL 1942765, at *12-13 (C.D. Cal., Feb. 1, 2018) (the plaintiffs
20 sufficiently alleged violations of the 'unlawful' prong where the cited laws
21 related to the misconduct alleged).)

22 **d. Ms. Perryman's Intentional Interference with the**
23 **Contractual Relations Between Leprino and Its**
Plan Members.

24 The elements of a claim for tortious interference with contractual
25 relations are:

- 26 (1) [Leprino] has a valid and existing contract with a
27 third party; (2) defendants had knowledge of the
28 contract; (3) defendants committed an intentional act
designed to induce a breach or disrupt the contractual

1 relationship; (4) actual breach or disruption of the
2 contract relationship occurred; and (5) damages were
3 suffered as a result. *Almont*, 121 F.Supp.3d at 979.

4 Leprino and its Plan members had a valid and existing contract. (TAC,
5 ¶ 137.) Ms. Perryman intentionally and knowingly interfered with this
6 contractual relationship by recruiting and inducing the patients (the Leprino
7 employees and beneficiaries) to accept services from the Defendants in
8 violation of the Plan's provisions, including by offering Leprino members
9 certain co-pay waivers, plastic surgeries, cosmetic injections, and paid
10 LOAs. (TAC, ¶ 138.) As a direct and proximate result of Ms. Perryman's
11 intentional interference, the Plan's relationship with the members was
12 disputed and the Plan suffered damages as a result. (TAC ¶ 139.) Thus,
13 Leprino has properly stated the elements of Perryman's intentional
14 interference with contractual relations. (See, e.g., TAC at ¶¶ 110 – 126, 136
15 – 140.)

16 Since all four claims are properly stated, the Court should find that
17 Leprino will prevail and that Leprino has established Ms. Perryman's liability
18 under the second and third *Eitel* factors.

19 **3. The Request for Monetary Damages, Attorney Fees,
20 and Costs are Reasonable, Documented, and In
21 Accordance With the Allegations and Relief Pled**

22 The fourth *Eitel* factor also looks at the “sum of money at stake in the
23 action” in the case of an entry of default judgment. *Eitel*, 782 F.2d at 1471. A
24 court has discretion upon default, to take into evidence and compute facts of
25 record to fix the amount which plaintiff is lawfully entitled to recover and to
26 give judgment accordingly. *Pope v. U.S.*, 323 U.S. 1, 11-12 (1944)¹; *In re*

27 ¹ Stating, “[i]t is a familiar practice and an exercise of judicial power for a
28 court upon default, by taking evidence when necessary or by computation
from facts of record, to fix the amount which the plaintiff is lawfully entitled to

1 *Consolidated Pretrial Proceedings in Air West Securities Litigation* (“*Air*
2 *West*”), 436 F.Supp. 1281, 1286-92 (N.D. Cal. 1977) (granting a default
3 judgment and finding plaintiff was damaged in the amount of \$48 million
4 dollars). Indeed, once default is entered, Defendants objecting to a default
5 judgment “bear a heavy burden; they must demonstrate that the well-
6 pleaded allegations. . . . are incapable of proof or are contrary to facts
7 judicially noticed or to uncontroverted material of record.” *Air West*, 436
8 F.Supp. at 1291.

9 In ruling on this Application, the Court may rely on detailed affidavits or
10 documentary evidence to determine the appropriate amount of damages.
11 *Int. Painters and Allied Trades Ind. Pension Fund v. R. W. Amrine Drywall*
12 *Co., Inc.*, 239 F.Supp.2d 26, 30 (2002). Here, the calculation of harm is
13 supported by the Bowles Declaration and Exhibits and supporting United
14 Declaration included with Exhibit A. Specifically, based on United’s financial
15 report United 004711 and upon the December 2023 invoice for attorneys’
16 fees and costs through November 30, 2023, Leprino’s harm amounts to a
17 total of \$2,053,896.66, which includes an unrecouped economic loss
18 \$1,984,518.61 plus reasonable attorneys’ fees of \$45,290.37, and costs of
19 \$24,087.68 . (Bowles Decl. ¶¶ 7-9, Exs. A-B.)

20 Moreover, because the harm Ms. Perryman caused as a recruiter and
21 participant in the scheme is indivisible from the acts and conduct of the
22 remaining Defendants, Ms. Perryman is subject to a judgment for the total
23 amount of the harm. *Am. Motorcycle Assn. v. Superior Ct.*, 20 Cal. 3d 578,
24 587 (1978) (“a tortfeasor is liable for any injury of which his negligence is a
25 proximate cause”); *see also Fed. Deposit Ins. Corp. Butte Cmty. Bank v.*
26 *Ching*, No. 213CV01710KJMEFB, 2017 WL 2225094, at *5 (E.D. Cal. May
27 _____
28 recover and to give judgment accordingly.” (Citations omitted).

1 22, 2017) (holding that ten defendants were jointly and severely liable for
2 \$8.8 million in damages for negligence and breach of fiduciary duty of care
3 because the results produced by their acts were indivisible).

4 In addition, both the ERISA and UCL claims authorize the award of
5 attorneys' fees and costs against Ms. Perryman. Pursuant to ERISA, 29
6 U.S.C.A. § 1132(g)(1), a plaintiff who is a fiduciary of the plan is entitled to
7 reasonable attorney's fees and costs in the court's discretion. *See Int'l*
8 *Painters and Allied Trades Industry Pension Fund v. R.W. Amrine Drywall*
9 *Co., Inc., et al. ("Int'l Painters")*, 239 F.Supp.2d 26, 31 (D.D.C. 2002) ("When
10 a court awards a default judgment against a defendant. . . . ERISA provides
11 that the court must award. . . . and (4) reasonable attorney's fees and costs
12 of the action.").

13 In the Central District of California, Local Rule 55-3 dictates a fee
14 schedule for the recovery of reasonable attorney's fees. Using this schedule,
15 Leprino is entitled to attorney's fees of \$45,290.37. (Bowles Decl. ¶ 9).
16 Further, the Court may look to "itemized billing statements" in support of
17 reasonable costs. *See Int'l Painters*, 239 F.Supp.2d at 32. Leprino's itemized
18 cost statement evidences \$24,087.68 in costs up through and including
19 December 2023. (Bowles Decl. ¶ 10, Ex. B).

20 Similarly, for violations of the UCL, Leprino may seek attorneys' fees
21 as a private attorney general under California Code of Civil Procedure
22 Section 1021.5, which provides that "a court may award attorneys' fees to a
23 successful party against one or more opposing parties in any action which
24 has resulted in the enforcement of an important right affecting the public
25 interest." *Bui v. Nguyen*, 230 Cal. App. 4th 1357, 1366 (2014) (citing *Zhang*,
26 57 Cal. 4th at 371, fn. 4).) Section 1021.5 authorizes attorneys' fees when:

27 [A] significant benefit, whether pecuniary or
28 nonpecuniary, has been conferred on the general

1 public or a large class of persons, (b) the necessity
2 and financial burden of private enforcement, or of
3 enforcement by one public entity against another
4 public entity, are such as to make the award
5 appropriate, and (c) such fees should not in the
6 interest of justice be paid out of the recovery. . . .

7 Here, Leprino has conferred a significant benefit on the public by
8 bringing to light the misconduct of the Defendants, who have harmed
9 multiple health plans through the same or similar schemes, including,
10 specifically, T-Mobile's Plan, AT&T's Plan, and Estee Lauder's Plan. (TAC
11 ¶¶ 26, 62; *McCormick v. Pub. Employees' Ret. Sys.*, 90 Cal. App. 5th 996,
12 1005 (2023) (holding that the significant public benefit conferred does not
13 need to be great or even readily ascertainable and may be obtained through
14 an individual's private right of enforcement) (citing *Indio Police Command
Unit Assn. v. City of Indio*, 230 Cal. App. 4th 521, 543 (2014).)

15 Moreover, there has not been any public enforcement, such that
16 Leprino's action for private enforcement is both necessary and adequate,
17 consistent with the standard established in *Bui*, 230 Cal. App. 4th at 1366
18 (citing *Conservatorship of Whitley*, 50 Cal. 4th 1206, 1217, 241 P.3d 840,
19 848 (2010) ("The 'necessity ... of private enforcement' has long been
20 understood to mean simply that public enforcement is not available, or not
21 sufficiently available.")). Although United shared some of its investigation
22 findings with the Federal Bureau of Investigation ("FBI"), the FBI has not
23 stepped in to prosecute the action. (TAC ¶¶ 75, 84; Bowles' Decl. ¶ 11.) As
24 a result, private enforcement remains the only option.

25 Finally, Leprino has met the requirement that the burden of private
26 enforcement be "out of proportion to [the plaintiff's] individual stake in the
27 matter." *Bui*, 230 Cal. App. 4th at 1367. Here, Leprino has spent nearly
28 three-quarters of a million dollars prosecuting Defendants for approximately

1 \$2.2 million in harm to the Plan. Hence, the attorneys' fees and costs are as
2 much about enforcing an important right as they are about achieving victory.

3 Based on the above and on Local Rule 55-3, Leprino is entitled to
4 attorney's fees of \$45,290.37 and costs of \$24,087.68.

5 **4. There is No Potential Dispute of Material Facts**

6 The fifth *Eitel* factor weighs in favor of default judgment. Because
7 Leprino's well-pleaded allegations must be deemed admitted for purposes of
8 this motion, there is no evidence of any disputed material fact. *Perez v. Bar-*
9 *K, Inc.*, No. 14-cv-05549-SJW (JSC), 2015 WL 4454785, at *12 (N.D. Cal.
10 June 4, 2015); *see also Philip Morris USA, Inc.*, 219 F.R.D. at 500 ("Here,
11 Plaintiff filed a well-pleaded TAC alleging the facts necessary to establish its
12 claims, and the court clerk entered default against the Defendant. Thus, no
13 dispute has been raised regarding the material averments of the TAC").

14 **5. There Is No Evidence of Excusable Neglect**

15 *Eitel's* sixth factor weighs in favor of Leprino and of entering default
16 judgement against Ms. Perryman. Leprino personally served Perryman with
17 the TAC over four months ago and she has never responded, despite having
18 ample time to do so. (Dkt. 271; Bowles Decl. ¶¶ 2, 6.) In addition, it appears
19 that her failure to appear is intentional, as Ms. Perryman was evading
20 service of a deposition subpoena at her home, which required Leprino to
21 serve her personally at her new place of employment Del Monte Foods.
22 (Bowles Decl. ¶ 6.) *See U.S. v. Broaster Kitchen*, CV 14-09421 MMM
23 (PJWx), 2015 WL 4545360 at *18-19 (C.D. Cal. May 27, 2015) ("Since
24 service was effected, defendants have neither responded to the TAC nor
25 attempted to have their defaults set aside. This chronology compels the
26 conclusion that defendants' defaults were not the product of excusable
27 neglect."). Given the above, Ms. Perryman will not be able to show that her
28 failure to appear is the result of any excusable neglect.

1 **6. A Decision on the Merits Does Not Weigh Against**
2 **Entering Default Judgment Given Perryman's**
3 **Consistent Failure to Appear**

4 The seventh and final *Eitel* factor holds that public policy generally
5 favors cases being decided on the merits. However, Ms. Perryman's failure
6 to defend this action has rendered it impossible to make a decision on the
7 merits. Indeed, "termination of a case before hearing the merits is allowed
8 whenever a defendant fails to defend an action." *Elektra Entertainment*
9 *Group Inc. v. Crawford*, 226 F.R.D. 388, 393 (C.D. Cal. 2005). As noted
10 above, Leprino personally served Ms. Perryman with the TAC over four
11 months ago; she has had ample time to respond, and still, has not appeared
12 and has evaded personal service of a deposition subpoena. (Dkt. 271;
13 Bowles Decl. ¶¶ 2, 6.) In sum, the last *Eitel* Factor and all of the *Eitel* factors
14 heavily favor granting default judgment against Ms. Perryman.

15 **V. CONCLUSION**

16 Based upon the foregoing, Leprino seeks a Court order granting this
17 Application and entering judgment in favor of Leprino and against Ms.
18 Perryman on the claims for Fraud, ERISA, UCL Violations, and Intentional
19 Interference with Contract in the amount of \$2,053,896.66.

20 DATED: February 22, 2024

HANSON BRIDGETT LLP

21 By: 

KATHERINE A. BOWLES

22 Attorneys for Leprino Foods Company,
23 Leprino Foods Health & Welfare Plan
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25
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PROOF OF SERVICE

**Leprino Foods Company, et al., v. Avani Outpatient Surgical Center, et al.
U.S.D.C. Central District of CA, Case No. 2:22-cv-07434 DSF (JC)**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 777 S. Figueroa Street, Suite 4200, Los Angeles, CA 90017.

On February 22, 2024, I served true copies of the following document(s) described as **LEPRINO'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR DEFAULT JUDGMENT AGAINST DEFENDANT CRISTINA "LUZ" PERRYMAN** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address sabrignani@hansonbridgett.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 22, 2024, at Los Angeles, California.

/s/ Silvia Abrignani
Silvia Abrignani

SERVICE LIST

Leprino Foods Company, et al., v. Avani Outpatient Surgical Center, et al.

U.S.D.C. Central District of CA, Case No. 2:22-cv-07434 DSF (JC)

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